

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE:	:	CHAPTER THIRTEEN
	:	
ROBERT TURNER and	:	BANKRUPTCY NO.: 5-03-bk-51756
CYNTHIA M. TURNER,	:	
	:	
DEBTORS	:	
	:	
ROBERT TURNER	:	
CYNTHIA M. TURNER,	:	
	:	
PLAINTIFFS	:	
	:	
vs.	:	{ <b>Nature of Proceeding:</b> Defendant's
	:	Motion to Dismiss Adversary Complaint}
EMC MORTGAGE CORP. as service	:	
agent for LaSalle Bank National Trust	:	
	:	
DEFENDANT	:	ADVERSARY NO.: 5-04-ap-50021

**OPINION**<sup>1</sup>

Presently before the Court is a Motion to Dismiss the above-captioned adversary complaint filed by the Defendant, EMC Mortgage Corporation. The succinct issue for resolution as presented by the Motion to Dismiss is whether the escrow for tax and insurance premium provisions in paragraph 2 of the underlying mortgage sets forth a security interest in collateral separate and apart from the real estate securing the underlying claim of the mortgage. The Defendant takes the position that the mortgage is not subject to modification under the terms of the Bankruptcy Code because the escrow

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<sup>1</sup> Drafted with the assistance of Richard P. Rogers, Law Clerk.

cannot be considered “real property”. The Plaintiff quite obviously disagrees with this position and requests that the Motion to Dismiss be denied.

This Court has had occasion to address this very issue in the previous matter of *Donadio v. Countrywide Home Loans, Inc.* (In re Donadio), 269 B.R. 336 (Bankr. M.D.Pa. 2001). Based upon the reasoning of the *Donadio* decision, the Court finds that the mortgage of the creditor is not subject to the anti-modification provisions found in 11 U.S.C. § 1322(b)(2) and, therefore, the Court denies the Motion to Dismiss the instant complaint. The Defendant shall file an answer to the underlying complaint on or within thirty (30) days of the date of this Order. The Court will issue a separate Scheduling Order on the underlying complaint.

An Order will follow.

BY THE COURT

DATED: March 25, 2004

/s/  
**JOHN J. THOMAS**  
Chief United States Bankruptcy Judge

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	:	
DEFENDANT	:	ADVERSARY NO.: 5-04-ap-50021

**ORDER**

For those reasons indicated in the Opinion filed this date, Defendant's Motion to Dismiss Adversary Complaint is hereby denied.

The Defendant is directed to file an answer in the above-captioned adversary on or within thirty (30) days of the date of this Order. A separate Scheduling Order will be issued by the Court.

Dated, at Wilkes-Barre, PA, this 25th day of March, 2004.

BY THE COURT

/s/

**JOHN J. THOMAS**

Chief United States Bankruptcy Judge